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Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 75

CAROLINA PIPELINE COMPANY, PETITIONER,

versus

YORK COUNTY NATURAL GAS AUTHORITY,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

H. SIMMONS TATE, JR.,
CHARLES W. KNOWLTON,
1207 Barringer Building,
Columbia, South Carolina 29201,

JOHN M. SPRATT,
York, South Carolina 29745,

L. MARION GRESSETTE,
LAWRENCE M. GRESSETTE, JR.,
St. Matthews, South Carolina 29135,
Attorneys for Petitioner.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

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YORK COUNTY NATURAL GAS AUTHORITY,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Carolina Pipeline Company prays for a writ of certiorari to issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled case on December 29, 1967; petition for rehearing was denied on February 6, 1968.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the District of South Carolina is printed in Appendix B hereto and is reported in 266 F. Supp. 244. The opinion of the Court of Appeals is also printed in Appendix B hereto and is reported in 388 F. (2d) 297.

JURISDICTION

Judgment of the Court of Appeals was entered on December 29, 1967. Re-hearing was denied on February 6, 1968. The jurisdiction of this court is invoked under 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED

1. Did the Federal courts err in holding that the District Court has jurisdiction to stay a declaratory judgment action brought in state court seeking to adjudicate whether Respondent has ever had a state-created right for exclusive sales to industry in York County, South Carolina, paramount to Petitioner's state granted certificate of public convenience and necessity?

2. Did the Federal courts err in not abstaining from any action until a final adjudication between the parties on substantive questior could be obtained in the state courts of South Carolina?

STATUTES INVOLVED

The statutory provisions involved are 28 U. S. C., Section 2283, which is the prohibition against stays of state court proceedings by Federal courts, and 11 U. S. C., Section 403(c), which is the statute which grants to a District Court certain limited stay powers in municipal debt composition proceedings. They are printed in Appendix A hereto.

STATEMENT

This case involves the question of whether the United States District Court for South Carolina has the power to stay a declaratory judgment action brought by Petitioner against Respondent in the Court of Common Pleas for York County, South Carolina.

Petitioner, Carolina Pipeline Company, is a Delaware Corporation with its principal office in Columbia, South Carolina, and is engaged as a public utility in the transmission and distribution of natural gas pursuant to a certificate of convenience and necessity granted by the South Carolina Public Service Commission on March 14, 1956. This certificate authorizes Petitioner to serve natural gas customers in certain areas of South Carolina, including York County. Petitioner is subject to the regulatory jurisdiction of said Commission.

Respondent, York County Natural Gas Authority, is a corporation created by Act No. 959, page 2652 of the Acts and Joint Resolutions of the General Assembly of South Carolina, 1954. The enabling act does not by any specific language grant an exclusive franchise of any kind to the Authority. Pursuant to Section 6 of said act it is exempt from the regulatory jurisdiction of the South Carolina Public Service Commission.

On August 25, 1964, the Authority filed a petition in the United States District Court in South Carolina under Chapter 9 of Title 11, U. S. Code seeking approval of a plan of composition for its bonded indebtedness and such a plan was approved. An order implementing the plan of composition was issued by the District Court on April 20, 1966. The only result of this order was to modify some of the provisions of the Authority's bonds and did not deal with any other kind of indebtedness or any of the Authority's assets.

In December, 1966, Carolina commenced an action in the Court of Common Pleas for York County against the Authority seeking a declaratory judgment to determine whether, under its state enabling act, the Authority has exclusive franchise to sell to industrial customers in York County. In that action Carolina alleges that there is no leg-

islative grant of an exclusive right to the authority to serve industrial consumers within York County; that there is a real controversy between the parties in that the Authority has always taken the position that industrial sales may be made only with the acquiescence of the Authority; that while Carolina has obtained such acquiescence in some instances, it has never agreed to the proposition that the Authority has the exclusive right. Carolina sought a judicial declaration that it has a concurrent right to make natural gas sales to industry without the acquiescence of the Authority and subject only to regulation by the South Carolina Public Service Commission.

In its answer in the State Court the Authority alleges that by implication its enabling act gives it exclusive territory in York County for all purposes, that it has such a right by contracts with Carolina, that Carolina is estopped to question the Authority's exclusive right to sell, and that sales to industry by Carolina would jeopardize the plan of composition approved by the Federal bankruptcy court and would impair the Authority's contractual obligations with its bondholders.

The Authority subsequently brought this action for a stay of the State court proceedings. The District Court at the initial and only hearing on March 9, 1967, did not take any testimony or receive any evidence in addition to what was already in the record of the composition proceedings. The District Court's order of March 31, 1967 (App. B), is, therefore, not based on independent findings of fact from its hearing of this matter but is based on (1) the pleadings in the State court action; (2) the pleadings and in part the evidence from the composition proceedings of the York Authority earlier before the Court and (3) the pleadings before the Court in the present action whereby the Authority prayed for the stay.

The issue properly before the District Court was not whether the franchise of the York Authority was exclusive but rather whether the District Court had the continuing power permanently to enjoin such a declaratory judgment action in State Court seeking a determination of whether the Authority's franchise is exclusive even though at that point the District Court's function in connection with the composition proceeding was essentially completed. A final Order approving the implementation of the plan of reorganization was filed prior to the argument of the appeal in the Court of Appeals. (Copy of Order is printed herein in Appendix C.)

The Court of Appeals affirmed the District Court, holding that the Federal Court was empowered to enjoin the State Court proceeding and require submission of the controversy to the District Court.

REASONS FOR GRANTING THE WRIT

I. The decisions below were not only erroneous but have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision. The prohibition against enjoining State court proceedings in Title 28, § 2283, is almost as old as the Federal judiciary itself, and this case raises serious problems concerning the basic relationship between State and Federal courts. The decisions below go against not only the statutory policy enacted by Congress, but the doctrines of this Court. Such a drastic intervention into the jurisdiction of a State court should be remedied by this Court in consideration of the following circumstances:

A. The declaratory judgment action brought by the Petitioner in the State court was brought in the only forum where it could be commenced as an independent action because there was no Federal diversity jurisdiction.

B. The action was properly brought in a State court to determine the status of the Petitioner's state-granted right to serve industry pursuant to is certificate of public convenience and necessity *vis a vis* contrary claims asserted by Respondent and sought a final determination of the existence or non-existence and relationship of rights of Petitioner and Respondent which can only be created or taken away by the State of South Carolina.

C. The substantive questions in the action can be properly decided ultimately only by the Supreme Court of South Carolina.

D. The State court action did not seek to take away a right of the former bankrupt but to ascertain whether such a right ever existed under State law.

E. The District Court by its injunction not only usurped the jurisdiction of State Courts but the regulatory power of the S. C. Public Service Commission over Petitioner as well.

F. The decisions below granting the injunction violate the clear prohibition of Title 28 U. S. C., § 2283.

G. There is no affirmative grant of power to the District Court for such an injunction in the chapter on municipal debt compositions, Title 11, U. S. C., § 403(c).

II. The decisions of the courts below do not follow the doctrine of decisions of this Court holding stays of State court proceedings by bankruptcy courts and otherwise to be in violation of Title 28, U. S. C., § 2283. There are as yet no decisions of this Court defining the limits of District Court power to stay State Court actions in municipal debt composition proceedings.

One of the leading cases is *Calloway v. Benton*, 336 U. S. 132, 69 S. Ct. 435, 93 L. Ed. 553 (1949). There the Central of Georgia Railroad entered into reorganization

proceedings under Section 77 of the Bankruptcy Act in 1940. The bankrupt was the lessee of railroad properties of South Western Railroad Company. South Western was given the alternative by the court of selling its property to the reorganized company for bonds or terminating the lease. South Western appeared in the proceeding and asked that its lease be adopted, but its proposal was rejected. Later South Western changed its position and proposed to convey its property to the Central, and some of its stockholders brought a State court action to enjoin the sale as lacking approval required by State law. The Supreme Court held that the District Court could not properly stay the State court action. Although it was argued that the State action was an attempt to prevent consummation of the plan of reorganization, the Court held that the corporate procedures to authorize the sale were strictly a question of State law and governed by no provision in the Bankruptcy Act. This Court stated in part: "We do not believe that Congress intended to leave to individual judges the question of whether State laws should be accepted or disregarded." This Court stated further: "There can be no question, however, that Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate . . . What it did give was exclusive jurisdiction of the debtor and its property wherever located."

To the same effect is *Texas v. Donoghue*, 302 U. S. 284, S. Ct. 192, 82 L. Ed. 264 (1937). The State of Texas claimed forfeiture of oil and possession of the same as against the bankruptcy trustee for the reason that the oil was allegedly produced or transported in violation of State law. The state applied to the bankruptcy court for permission to bring suit in State Court to confiscate the oil. The Court withheld consent and the Supreme Court reversed, holding that de-

nial of permission was an abuse of discretion, and that the State Court action should be permitted to proceed.

Outside of a Bankruptcy Act situation the same principle prevails. Even though an act of Congress may have preempted certain subject matter, it does not follow that the Federal Court can stay any and all State court proceedings involving that subject matter. See *Amalgamated Clothing Workers of America v. Richman Brothers,* 348 U. S. 511, 75 S. Ct. 452, 99 L. Ed. 600 (1955). There in a labor dispute the employer sought injunctive relief in the State Court against a labor union. The Union asked the Federal Court to stay the proceedings upon the ground that the subject matter was an exclusive Federal matter under the Taft-Hartley Act. The Supreme Court held that such a stay was improper under the prohibition of Title 28, U. S. C., § 2283.

Here the Federal Courts at the very least should have abstained.

III. The holdings below in the instant case clearly conflicted with the doctrine enunciated by the Court of Appeals for the Second Circuit in *In Re Ambassador Hotel Corporation,* 124 F. (2d) 435 (2nd Circuit 1942).

In that case, there had been a reorganization of a bankrupt under § 77B of the Bankruptcy Act. While this is a different section from that used by the Authority, it has a similar procedural framework. There voting trust certificates had been issued under the plan or reorganization. One of the certificate holders brought an action in State Court seeking a declaratory judgment that the trust agreement had been terminated by operation of State law. The stay of the State Court action was denied on the ground that the District Court lacked jurisdiction to determine the rights asserted in the State Court action, although clearly the re-

sult of the State Court action would have great impact upon the plan. The Court stated in part as follows on Page 436:

> "The future fate of the corporation was not within the control of the bankruptcy court, nor could that court reserve power to adjudicate controversies in which it might become involved—whether they should arise from a change in State law or from the corporation's own conduct,"

The Court stated further on Page 437:

> "There is no more reason to exclude the state court from jurisdiction to determine the rights of holders of voting certificates under the New York statute on the ground that its judgment may modify the plan, than they would be to enjoin a *quo warranto* proceeding against the corporation or even the prosecution of a large tort claim. A judgment of ouster in *quo warranto* or the entry of a very large money judgment in a personal injury action might equally disrupt execution of the plan of reorganization. **But the bankruptcy court by confirming a plan of reorganization does not guarantee either the plan will be carried out regardless of what may befall the new corporation; nor does it have ancillary jurisdiction to control litigation respecting future events which may affect the new corporation's ability to carry out the plan.**" (Emphasis added.)

The Federal courts below in this case take the view that the bankruptcy court is a permanent guardian of a former bankrupt even after the court approved plan of composition has been implemented.

CONCLUSION

For the foregoing reason, this petition for a writ of certiorari should be granted.

Respectfully submitted,

H. SIMMONS TATE, JR.,
CHARLES W. KNOWLTON,
1207 Barringer Building,
Columbia, South Carolina 29201,

JOHN M. SPRATT,
York, South Carolina 29745,

L. MARION GRESSETTE,
LAWRENCE M. GRESSETTE, JR.,
St. Matthews, South Carolina 29135,
Attorneys for Petitioner.

May 1, 1968.

APPENDIX A

28 U. S. C., Section 2283—Stay of State Court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.

Title 11, U. S. C., Bankruptcy, Chapter 9—Composition of Indebtedness of Local Taxing Agencies—Section 403-(c)—Ancillary injunctions; preliminary stay of other proceedings.

(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any in-

come-producing property, unless the plan of composition so provides.

Any agency or instrumentality referred to in section 401 of this title may file a petition for a preliminary stay with the court referred to in subsection (a) of this section stating (a) that the petitioner is insolvent or unable to meet its debts as they mature; (b) that it desires to effect a plan for the composition of its debts, a copy of which is filed and submitted with the petition; (c) that a creditor of the petitioner holding a security affected by the plan or a person claiming to be such a creditor (naming him and giving his address and the name and address of his attorney of record, if any), is attempting or threatening to obtain payment of said security in preference to other creditors by means of the commencement or continuation of a suit or process of the class hereinbefore in this subsection described; (d) that efforts are being made in good faith to the end that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) shall accept it in writing; (e) that there is a reasonable prospect of such acceptance within a reasonable time; (f) that upon such acceptance the petitioner intends to file a petition under subsection (a) of this section; and (g) that the petitioner prays that the judge will upon notice enjoin or stay the commencement or continuation of said suit or process. A single petition may seek the preliminary stay of several suits or processes brought or threatened by the same or different creditors or persons claiming to be creditors. The petition shall be accompanied by the filing fee required in subsection (a) of this section, unless such fee shall have been paid upon the filing of an earlier petition for a preliminary stay involving the same plan, and no further fee shall be required upon the subsequent filing of a petition under subsection (a) of this section. Upon such petition the judge shall fix a time and place for hearing and direct that notice thereof shall be given in such manner as he shall prescribe to said creditor or person claiming to be a creditor and to any other person deemed by him to be interested. After such hearings, and upon being satisfied of

the truth of the allegations of the petition, the judge may, in his discretion, except where rights have become vested, enjoin or stay the commencement and continuation of said suit or process until a date fixed by him in his order not exceeding sixty days from the date of entry thereof. The judge shall retain jurisdiction to vacate said injunction or stay, or to extend the period thereof for one additional period of not exceeding sixty days, upon good cause shown.

APPENDIX B

Ex parte York County Natural Gas Authority, Petitioner,
In re Outstanding Bond Series 1957, 1958, 1959, 1960
Payable Solely From Revenues

YORK COUNTY NATURAL GAS AUTHORITY,
Petitioner,

v.

CAROLINA PIPELINE COMPANY, Respondent

No. B/2075

United States District Court
D. South Carolina

Rock Hill Division

Heard March 9, 1967
Decided March 31, 1967
266 F. Supp. 244

HEMPHILL, District Judge.

The York County Natural Gas Authority is in the implementation stage of an approved plan [1] for composition of its debts. Carolina Pipeline Co., the supplier of the county gas authority and a principal creditor, has filed suit against the county authority in the court of common pleas of South Carolina. The suit is an action for a declaration that the Authority does not hold exclusive sales rights in the authority area for sales in the area. They do not dispute that York does have exclusive sales rights for commercial and residential consumers. York filed its answer in the state court, and it now moves in this court to enjoin the action in the state court and to settle the dispute here. A temporary restraining order and preliminary injunction was ordered on January 26, 1967, and a rule to show cause why the injunction should not be issued was served on Carolina. Argument was had on March 9, 1967, and the matter before the court is Carolina's motion to dismiss the petition and to vacate

[1] *Ex parte York County Natural Gas Authority*, 238 F. Supp. 964 (D. S. C. 1965), aff'd sub nom. *Mozingo v. York County Natural Gas Authority*, 352 F. (2d) 78 (4th Cir. 1965), cert. denied, 383 U. S. 970, 86 S. Ct. 1277, 16 L. Ed. (2d) 310 (1966).

the rule to show cause. The issue is whether the bankruptcy court has jurisdiction to issue the writ, and, secondly, if so, whether the writ should be issued.

In 1954 the gas authority was brought into being by an act of the state legislature in order to bring gas service to the York County area. At the time, Carolina Pipeline was to be utilized by the Authority for the construction of lines and mains and thereafter for a contract term to supply gas to the Authority. The Authority became aware that it could not meet its bond debts and its current expenses out of revenues and petitioned for the plan of composition, which was subsequently granted and approved. At that time bondholder Mozingo protested the plan of composition and submitted an alternative plan which involved leasing the operation to Carolina Pipeline. This alternative was rejected and the original plan was adopted and approved on appeal. The York County Authority and the Lancaster and Chester Countys' Natural Gas Authorities, which are similarly situated, are now implementing those approved plans for debt composition. Carolina Pipeline appeared in this composition proceeding, but, aside from supporting the Mozingo plan, it did not protest the composition plan. This brief, and perhaps over simplified, statement of the situation is offered here only as background to aid in understanding the present controversy. Carolina Pipeline has now brought an action in the South Carolina court for a declaration that they may make sales of gas to industrial customers in the Authority area, and that the Authority does not have the exclusive rights to make those sales.

Carolina Pipeline maintains that the question posed in the state action raises only questions of state law, that it is wholly unrelated to the matters involved in the plan of composition, and that therefore this court does not have jurisdiction nor cause for enjoining them from further prosecution of the declaratory judgment action.

The Authority moves for the injunction on the theory, among others, that the declaratory judgment action by Carolina involves a property right of the debtor, an asset, and that subject matter is within the jurisdiction of the court of bankruptcy.

In the opinion of the court there is jurisdiction in the district court and the injunction should be ordered.

Section 2283 of the Judicial Code, 28 U. S. C. A., section 2283, provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Along with that limited power there is statutory authority for issuing injunctions in bankruptcy proceedings to protect the orders of the bankruptcy court and to enforce the Bankruptcy Act. Section 11(a) (15) of title 11 of the United States Code provides that the courts of bankruptcy are invested with such jurisdiction as will enable them to:

> Make such orders, issue such process, and enter such judgments in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this title: Provided, however, That an injunction to restrain a court may be issued by the judge only.

See also the provisions of section 403(c) of title 11 of the Code.

In *Callaway v. Benton*, 336 U. S. 132, 69 S. Ct. 435, 93 L. Ed. 553 (1949), the Supreme Court stated the practical limits of the bankruptcy court's powers in a similar framework.

> We have held that a court of bankruptcy has exclusive and nondelegable control over the administration of an estate in its possession. *Thompson v. Magnolia Petroleum Co.* (1940), 309 U. S. 478, 60 S. Ct. 628, 84 L. Ed. 876; *Isaacs v. Hobbs Tie & Timber Co.* (1931), 282 U. S. 734, 51 S. Ct. 270, 75 L. Ed. 645. There can be no question, however, that Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate. One exception is found in the express language of the statute. What it did give is exclusive jurisdiction of the debtor and its property wherever located. § 77, sub. a. The interest held by the debtor in South West-

ern's lines was a leasehold estate. Such an estate is the debtor's 'property' within the meaning of the Act. Any controversy involving that estate would have been within the exclusive jurisdiction of the bankruptcy court. (Footnotes omitted.)

[1] The dispute between these parties involves the right to make gas sales in the authority area. Since the Authority was formed, it submits, it has considered the right to make all gas sales an exclusive one: Carolina was to operate as a supplier of gas to the Authority only. What sales of gas Carolina made to industrial users was done with the assent of the Authority, and this continues even now during the pendency of the declaratory judgment action in the state court. That exclusive sales right was unquestionably a valuable property. See *e. g.*, 37 C. J. S., Franchises, § 8 (1943). It is being held by the Authority, and this is stated by Carolina in its complaint. The record strongly suggests that the Authority's possession of this right was an implicit premise on which the plan for composition was based. The revenues required to meet the obligations of the refinancing are, it is argued, dependent on the right to sell being an exclusive one. For this controversy the problem can be narrowed even further. The Authority's right to make all sales, it is argued, must be exclusive as against Carolina at the least extent. Carolina is the only party challenging the Authority's possession of the right; Carolina is the sole supplier of gas to the Authority and the Authority could not fairly meet price competition with their vendor should Carolina be allowed to make industrial sales; the past behavior of Carolina shows that Carolina recognized that the Authority had an exclusive sales right. The view the Authority has taken is that Carolina is now estopped to assert the right on behalf of itself, that they are guilty of laches, and that they are bound by contract not to serve the area as a distributor in any event.

During the original proceedings in this court for the debt composition, Carolina officers represented that they were not in competition with the Authority. If now Carolina may claim the right to make industrial sales, argues the Authority, there is nothing in principle to prevent them

from asserting at a later date the right to make sales to any sector of the market. These arguments are highly persuasive that the matters in controversy could have grave effects on the refinancing plans. If Carolina should prevail on the merits of the case the entire plan of composition, which was so arduously developed and argued through to approval in the Court of Appeals, may have to be completely reformed.

[2] These considerations satisfy the court that the matters in dispute here vitally affect the plan of bankruptcy itself. It is impossible under these circumstances to accept Carolina's theory that the declaratory judgment action they have initiated could be fairly and neatly completed without the possibility of throwing courts and judgments in conflict. The argument that the action is an entirely separable controversy from the debt composition proceedings is specious but when it is related to the past involvement of Carolina in the composition proceedings the distortion becomes readily apparent. This is not to say that the declaration could not be reached alone at any one time by either court, but that this court does have jurisdiction under the statute, and that the situation calls for the issuance of the writ of injunction.

The authorities cited by Carolina are distinguishable in that they do not directly involve assets in the estate of the debtor and the outcome of the dispute in those cases would not have invalidated the bankruptcy. The Court held in *Callaway v. Benton*, 336 U. S. 132, 69 S. Ct. 435, 93 L. Ed. 553 (1949), that the state action did not affect the reorganization of the Central of Georgia railway. In that case, South Western Railroad, which was leasing lines to Central, was given the alternative of selling the lines to Central or having the lease cancelled. South Western offered to sell the lines if a majority of their shareholders would agree. The state action in that case was brought by the South Western shareholders for a declaration that the lines, as the entire assets of the company, could not be sold with less than a one-hundred percent affirmative vote by the shareholders. Under either alternative the reorganization could be carried through to completion.

In re Ambassador Hotel Corp., 124 F. (2d) 435 (2nd Cir. 1942)), the other principal authority cited by Carolina, did not involve a dispute which would have vitiated the bankruptcy. In that proceeding the hotel was to be taken over in reorganization by a new corporation whose stock was to be held in a voting trust. A state statute was subsequently enacted to the effect that no voting trust was to last over five years. After five years a holder of voting trust certificates demanded his shares from the trustees. When the trustees refused, the certificate holder initiated an action in the state court to declare that the trust had been terminated. The state action was allowed to proceed on the grounds that the bankruptcy court had no jurisdiction to enforce the rights asserted by the certificate holder in the state action, and, secondly, that the state court action would not interfere with the district court's decree approving the reorganization plan. The court emphasized that the state action must challenge the validity of the decree in order to warrant an injunction. In the instant case that requirement is satisfied and the distinction is met.

The other cases cited by Carolina are of like import, and they are not controlling here.

While this determination is supported, in the opinion of the court, by the clear language of the statutes cited, it is of interest and of some support to note *Poinsett Lumber & Mfg. Co. v. Drainage Dist. No. 9*, 119 F. (2d) 270 (8th Cir. 1941). In a composition plan approved by the district court, an order was issued enjoining all creditors from enforcing by suit any claim whether equitable or legal. The Lumber Company moved for leave to sue in the state court for damages to land caused by water from a floodway which was built by the Drainage District. The Drainage District opposed the motion, admitted constructing the floodway, but denied they caused the damage, and raised the bar of laches, estoppel, *res judicata*, and the statute of limitations. The Lumber Company's motion to strike these objections on the merits was denied, and leave to sue in the state court was denied. It was held that the claim for damages was a claim included in the bankruptcy act as being one susceptible of proof and adjudication, and that the claimant was a

creditor within the meaning of the Act. The decision was affirmed as being within the discretion of the district court.

[3] As to the contention that an injunction would be prohibited by section 403(i) of title 11 of the United States Code, the answer should be that the section does not apply here where no state power, or agency, or action is limited or involved in this dispute between private parties. As between these parties Carolina cannot invoke the statute. See *Leco Properties, Inc., v. Crummer & Co.*, 128 F. (2d) 110. (5th Cir. 1942).

The doctrine of abstention was raised by brief as affording doctrinal support for allowing the state action to proceed. It is inapplicable to this controversy. Moreover, as to matters within the discretionary powers of the court, the gravity of the circumstances in this case would far outweigh the inducements to abstaining.

For the above reasons the court rules that the matter is within the jurisdiction of the court, and orders that the Carolina Pipeline Company, having failed to show cause why it should not be enjoined from proceeding with the action in the South Carolina Court of Common Pleas, is hereby enjoined and stayed from further prosecution of that action.

And it is so ordered.

CAROLINA PIPELINE COMPANY, Appellant,

v.

YORK COUNTY NATURAL GAS AUTHORITY, Appellee

No. 11454

United States Court of Appeals
Fourth Circuit

Argued Dec 6, 1967

Decided Dec. 29, 1967
388 F. (2d) 297

PER CURIAM:

The propriety of the District Court's stay at the instance of the defendant of a suit by the Carolina Pipeline Company against the York County Natural Gas Authority, in an appropriate State court in South Carolina, is the sole question on this appeal. Without intending, of course, any determination of the remaining issues of the case, we uphold the order in both its aspects now on review.

In that suit the Company sought a declaratory judgment to the effect that the Authority did not have the exclusive right to make natural gas sales to industries in York County, but that the Company could make similar sales without the assent of the Authority, subject only to regulation by the Public Service Commission of the State. The Company is a private Delaware corporation admitted to do business in South Carolina, and the Authority is an incorporated State agency.

The District Court had previously, February 10, 1965, approved a plan of the Authority for a composition of its debts pursuant to the Bankruptcy Act, Chapter 9, 11 U. S. C., § 401 *et seq.* The Authority's origin and purpose, its petition and plan, are stated in our opinion in *Mozingo v. York County Natural Gas Authority,* 352 F. (2d) 78 (4 Cir. 1965), cert. den., 383 U. S. 970, 86 S. Ct. 1277, 16 L. Ed. (2d) 310. Implementation of the plan was still in process at the time of the District Court's stay.

[1] As one of its principal resources, the Authority claimed the exclusive right to sell natural gas in York County. A vital asset, if belonging to the Authority, it was a property right passing into the exclusive care and custody of the bankruptcy court by virtue of the order approving the Authority's plan. *Poinsett Lumber and Mfg. Co. v. Drainage District No. 7*, 119 F. (2d) 270, 272 (8 Cir. 1941); *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734, 51 S. Ct. 270, 75 L. Ed. 645 (1931). Conceivably the State court suit could mean the removal of this property from the bankruptcy estate, and hence the issue of ownership was of primary concern to the administering court.

[2-4] In the effectuation of the composition plan the Federal Court was empowered to enjoin further pursuit of the State court action, and require submission of the controversy to the bankruptcy court for decision, the further prayer of the Authority in its petition for the stay. 11 U. S. C., §§ 401, 11(15), 403(c); 28 U. S. C., § 2283. If the District Court in its discretion could have granted the plaintiff leave to proceed in the State court for determination of the respective rights of the parties, it would have necessarily been conditioned on the proviso that no execution of the judgment should follow except in the bankruptcy court. The refusal of that option instantly was not an abuse of discretion. In this consideration it is noteworthy that the exercise of Federal jurisdiction was at the solicitation of the State agency itself, and not an intrusion by the Federal Judge into a State matter.

Affirmed.

APPENDIX C

ORDER OF DISTRICT COURT DATED AND FILED SEPTEMBER 27, 1967

Proceedings to finalize Petitioner's Plan of Composition were heard before the court at Rock Hill on September 14, 1967. The court asked for appearances; other than counsel and witnesses for petitioner, there were none. The United States Marshal called Respondent at the Court House door and reported no answer. The file reveals no communication indicating desire or intention on the part of any bondholder to contest.

On February 10, 1965, this court filed its interlocutory order approving the proposed plan of composition.[1] Appellate review resulted in affirmance.[2] On April 11, 1966, the Plan became complete and, by its Order of April 20, 1966, the court directed implementation within 15 days. On July 12, 1967, Petitioner filed its Report and Return to Order approving Plan of Composition. The court determined that a hearing was proper and on July 24, 1967, directed the Clerk to perform detailed effort to notify all bondholders. It affirmatively appears that this was done.

The Clerk of the Court obtained the names and addresses of all known bondholders of the Authority as of July 31, 1967. His certificate of mailing and of publication satisfactorily shows he mailed a Notice [3] to each bondholder and advertised in **The State** newspaper and the **Daily Bond Buyer**. Full opportunity was then afforded for any dissatisfied bondholder to again have his day in court.

At the Rock Hill hearing the court entertained a statement by counsel for Petitioner, was received and made a part of the record. Testimony of the fiscal agent and the Manager of the Authority supplemented information already in the possession of the court.

THEREFORE,

(A) Petitioner's Report and Return of costs and disbursements is ratified and confirmed by this court

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[1] 238 F. Supp. 964.
[2] 352 F. (2d) 78, 383 U. S. 970.
[3] The court prescribed the Notice in its Order of July 24.

(B) The interlocutory Order granted on February 10, 1965, is hereby declared finally binding and effective in all respects. The court declares the refunding validly and properly completed, subject to exchange of remaining Outstanding Bonds not yet deposited within time allowed therefor, and subject to continued retention of jurisdiction by this court for handling of any remaining matters dealing with exchange of remaining Outstanding Bonds or any other phase of the Plan of Composition, or with proper protection of the assets and properties of the Authority essential to fulfillment of the Plan, including particularly the issues now raised by Carolina Pipeline Company affecting exclusive character of the rights of the Authority within its service area.

(C) Costs heretofore approved are ratified. Additional costs noted in Petitioner's Report and Return are approved, and those incurred since filing of the Return are likewise approved as follows:

Clerk's costs:

The Bond Buyer	$ 200.90
The State	$ 69.75

Such costs are obligations of the Authority.

The court fixes attorney's fees for Petitioner's attorneys at $25,000.00.

(D) The court finds that the Petitioner has made available for the creditors affected by the Plan of Composition all the consideration provided for in said Plan, and, upon payment of the amounts approved is discharged from all debts and liabilities dealt with in the Plan except as provided therein, or as provided by this court. The Plan is henceforth binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and if filed or evidenced, whether or not allowed, including all creditors who have not, as well as those who have, accepted the Plan.

(E) The court further finds that the Refunding and Improvement Bonds of the Authority in the amount of $4,300,000.00, dated March 1, 1964, and the Certificates of Indebtedness of even date with such bonds, deposited by the Authority with the Fiscal Agent for delivery of the

Series A Bonds and the Certificates of Indebtedness to the creditors of the Authority and for delivery of the Series B Bonds to their purchasers, have been lawfully authorized and constitute valid obligations of the Authority, in accordance with their terms and conditions, and that the provisions made to pay or secure payment thereof are valid.

(F) In this connection, this Order shall not constitute an adjudication of the claims of Carolina Pipeline Company against the assets and properties of the Authority, which claims though extent long prior thereto were first asserted after the interlocutory Order of February 10, 1965, approving the Plan of Composition herein and after the Order of April 20, 1966, directing its implementation. Said claims await adjudication by this court after disposition of a preliminary order in reference thereto, which is now under appeal.

(G) The Fiscal Agent shall continue to serve as Exchange Agent for deposit of Outstanding Bonds in exchange for Series A Refunding Bonds and Certificates of Indebtedness until the time limit set forth in the Order of the United States Circuit Court of Appeals herein, that is to say until March 1, 1972, after which date the Fiscal Agent shall forthwith surrender to the Authority for cancellation and discharge any Series A Refunding Bonds of the Authority dated March 1, 1964, and any Certificates of Indebtedness of like date, which have not by that time been delivered in exchange for Outstanding Bonds of the Authority pursuant to prior authorization and direction herein, whereupon any Outstanding Bonds of the Authority, Series of 1957, 1958, 1959 and/or 1960 then remaining undeposited with the Fiscal Agent for refunding exchange shall stand fully and finally discharged and extinguished for all purposes whatsoever, and same shall no longer be enforceable obligations of the Authority for purposes of refunding exchange as now authorized herein. Thereupon any monies, funds or securities of the Authority then held by the Fiscal Agent for use in discharging any obligations of the Authority theretofore outstanding under any Bonds or Certificates of the Authority discharged and extinguished as provided herein, shall thereupon be deposited in and become a part of the Debt

Service Reserve Fund established pursuant to the Refunding Bond Resolution of the Authority dated April 16, 1964, as amended and supplemented.

(H) A copy of the Clerk's minute sheet is attached hereto and is an exhibit hereof.

AND IT IS SO ORDERED.

ROBERT W. HEMPHILL,
United States District Judge.

Columbia, South Carolina,
September 27, 1967.